



House Committee on Elections
Written Submission of Texas Impact on Interim Charges 2 & 3
Joshua Houston, Advocacy Director
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Texas Impact thanks the committee for its work over this challenging interim. We thank the committee as well for the opportunity to provide this testimony.

Texas Impact serves Christian, Jewish, Muslim, and other religious organizations that seek to influence public policy on issues of shared concern. This encompasses a wide range of topics relating to poverty, peace, and justice, and includes broad religious affirmation and support for the rights of every qualified voter to participate in safe and fair elections.

Over the past several months, Texas Impact has fielded countless questions from our membership regarding special considerations for 2020 elections resulting from COVID-19. In particular, Texas faith communities share a sense of call to provide all kinds of support to their own most vulnerable and marginalized members, and this call extends to supporting those members in voting safely. Texas Impact has dedicated significant efforts and resources to helping congregations support their seniors and members with disabilities in voting, both in Texas' July primary runoff elections and in the upcoming November general election.

Based on on-the-ground experience and observations, we are pleased to offer this testimony, which we hope helps to concretize for the committee some of the challenges seniors and Texans with disabilities—as well as other voters—face, not only in the 2020 election cycle but also in non-pandemic election years. Our testimony relates to Interim Charge 2 (voting in pandemic) and Charge 3 (strengthening integrity and fair elections).

If every voter 65 or older decided to vote by mail in 2020, then the number of mail-in ballots would roughly triple.¹ Faith communities of all stripes count seniors and Texans with disabilities among their members. Many of these voters are contemplating voting by mail for the first time, and they have many questions. To answer their questions, Texas Impact researched and wrote a primer on Texas's laws regarding early voting by mail; held more than a dozen

¹ Normally, only 6-8% of the total electorate votes by mail in Texas, however, 22 percent of the electorate in the 2016 General Election was age 65 or older. (See *Lewis v. Hughs*, 5:20-cv-00577, Western District of Texas, San Antonio Division, (plaintiffs' brief at p.22); <https://fivethirtyeight.com/features/there-is-no-evidence-that-voting-by-mail-gives-one-party-an-advantage/>; <https://www.tribtalk.org/2018/10/12/texas-no-country-for-young-voters/>).

webinars for congregation leaders and their members; and developed a “toolkit” for local congregations to support their vulnerable members to vote safely.

In addition to questions, our membership also voiced frustrations. Based on comments and concerns we heard from voters in counties large and small across the state, we offer the following recommendations as legislative strategies to strengthen Texas elections:

- 1) Expand ballot tracking for domestic voters.
- 2) Lower the ballot rejection rate by extending the ballot receipt deadline and providing an opportunity to cure mistakes.
- 3) Eliminate the need for an excuse to vote by mail.
- 4) Allow person delivery of a mail-in ballot to the early voting clerk at any time.
- 5) Pay the postage on applications and ballots.
- 6) Require counties to retain election records for longer than 22 months.
- 7) Strengthen the Public Information Act so counties are more responsive to requests.

Discussion

In the late 1980's, Texas pioneered early *in-person* voting. The Texas Legislature's work on “retail voting” culminated in 1991 when it passed SB 1234 creating early voting polling places at locations across counties at locations such as shopping malls and grocery stores for convenience. Texas's early voting program was a model for many other states.² However, other states made the policy choice to expand early voting *by mail* instead of, or in addition to, early voting in-person. In normal times, each method of voting has advantages and disadvantages. However, due to COVID-19, the states that opted for early voting by mail are better positioned to administer the 2020 election.

1. Ballot Tracking. Texas should expand ballot tracking for domestic voters.³ The most frequently asked question Texas Impact received from our members was how a voter could confirm whether an application and/or a ballot had been received. During the July primary runoff, Texas Impact piloted a program with the University Presbyterian Church of Austin to assist its nearly 200 eligible members that were 65 years or older to apply to vote by mail. At least six of the 200 reported that neither a ballot, nor notice an application had not been accepted, ever arrived at their residence or arrived after Election Day. For those six voters, Texas law lacks a satisfying remedy. Some voters physically are not able to go in-person on Election Day to have an election judge sort out errors or vote provisionally, as was the case for two of our six Presbyterians. In theory, those voters could have called the county for confirmation. In reality, however, a voter usually could not know there is a problem until it is too late to remedy. Finally, every citizen of a democracy—especially election administrators, political scientists, and third party observers—would benefit from knowing whether systemic failures happened in the election office, the post office, or voter error.

In 2020, voters are used to tracking their packages online. Voters expect the same with something as important as the franchise. Texas tracks ballots for military and overseas voters

² Alternative Ballot Techniques: Hearing Before the Subcommittee on Elections of the Committee on House Administration, U.S. House of Representatives, One Hundred Third Congress, Second Session, p. 7 (September 22, 1994).

³ <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>

under the federal 2009 Military and Overseas Voter Empowerment Act, however the statute only requires the system confirm for a voter when the county has received a ballot.⁴ While treating domestic voters the same as military and overseas voters would be an improvement, better would be a system that confirms that the voter's application has been received or approved, and when the ballot has been sent, arrived, and accepted or rejected by the county. In Texas, Williamson County has recently implemented such a ballot tracking system.⁵ Colorado goes one step further providing a voter text message updates about their ballot. Based on feedback from our members, voter confidence in the integrity of the election would be significantly improved with ballot tracking.

2. Rejection Rates. Texas should lower the ballot rejection rate by extending the ballot receipt deadline and providing voters an opportunity to cure mistakes. The second most frequently asked question that Texas Impact received from our membership concerned ballot rejections. Based on the feedback, decreasing Texas's ballot rejection rate would increase confidence in the integrity of our election system. Additionally, it would reduce the number of ballots that investigators would have to search through to pinpoint fraud.

Fortunately, the overwhelming majority of rejected mail-in ballots can be prevented and verified by extending the ballot receipt deadline and offering voters an opportunity to cure their mistakes. In response to our membership's concerns, we made a Public Information Act request on August 5 for "records sufficient to show the total number of ballots by mail accepted and rejected" in the 30 largest counties for the primary and general elections dating back to March 2016. While data is still trickling in, and several counties have yet to respond despite follow up phone calls and emails, the data we have show a rejection rate of 1.6 percent. Almost all are avoidable.

2.1. Postmark Deadline. Texas should switch to a "postmarked on or before election day" deadline, or at a minimum, extend the ballot receipt deadline to treat domestic and overseas ballots the same. The overwhelming majority of ballots are rejected because they arrive after the domestic ballot receipt deadline, which is the day after the election for domestic ballots. However, Texas accepts military and overseas ballots until the fifth day after an election.⁶ Consistent with "one person/one vote," there is no reason to treat domestic and international ballots differently since the early voting ballot board must convene to count ballots anyway.

Ballot boards should not be overwhelmed and an election would have to be very close for results to be delayed since the total number of ballots rejected for arriving after the deadline is not large. In Harris County, the largest number of ballots rejected for arriving late in a single election for the last five years was 2,034. In Bexar County, the largest number was 477. In Fort Bend County, the largest number was 294. Assuming these rejected ballots were otherwise valid, switching to a "postmarked by" deadline would slash the rejection rate by eliminating 84.7 percent of the rejected ballots in Harris County, 86.4 percent in Bexar County, and 68.1 percent in Fort Bend County.

⁴ Texas Election Code §101.108; see also <https://webservices.sos.state.tx.us/FPCA/index.aspx>

⁵ <https://apps.wilco.org/elections/bbm/default.aspx>

⁶ <https://www.votetexas.gov/military-overseas-voters/>

2.2. Opportunity to Cure. Texas should provide voters an opportunity to cure mistakes or ambiguities such as questionable signature matches before a ballot is rejected. For the fraction of ballots rejected for reasons other than arriving after the deadline, the voter could cure the overwhelming majority. Additionally, counties should not be overrun with voters needing to cure a ballot as the total number is but a fraction of those rejected for arriving late. In Harris County, the largest number of ballots rejected for reasons other than arriving late in a single election for the last five years is 494. In Bexar County, the largest number was 146. In Fort Bend County, the largest number is 224.

Voters have the right to cure mistakes in nineteen other states.⁷ Providing voters an opportunity to prove their identity not only increases voter confidence in the integrity of the electoral system, but also reduces the gross number of suspect ballots to be investigated by law enforcement entities saving time and investigatory hours. Mandating an opportunity to cure protects both the integrity of the election and one person/one vote.

3. No Excuse. Texas should join the supermajority of states that do not require an excuse to vote by mail.⁸ Before the pandemic, 34 states did not require an excuse to vote by mail. Now, 35 states have a statute and 44 states are no excuse for 2020. It is unclear what purpose requiring an excuse serves. Fraud is practically non-existent. Oregon has processed over 100 million mail-in ballots since 2000, and has documented only a dozen cases of fraud.⁹ However, COVID-19 is existent. Many caregivers interpret Texas law to require them to vote in-person while a family member with disabilities or 65+ in their care may vote by mail. In a pandemic, allowing one individual in a household to qualify, but requiring the other to vote in-person does not make sense.

4. Hand Delivery. Texas should make permanent the Governor's Proclamation from July 27th, which allows a voter to personally deliver a mail-in ballot to the early voting clerk at any time. Texas cannot fix the postal service for the federal government. Texas can provide voters independence from the federal government by allowing a voter to hand deliver a mail-in ballot at any day prior to the close of the polls on Election Day.

5. Postage. Texas or Congress should pay the postage on applications for ballot by mail and on the carrier envelope of the official ballot. The federal government pays the postage for military and overseas voters.¹⁰ Texas pays the postage for voter registration.¹¹ With the prevalence of online bill payment, many households no longer have stamps. Additionally, some people are more medically fragile than others. A trip to the post office increases the health risk for more medically fragile voters and essential postal workers during a pandemic. Finally, for many Americans, the price of stamps is a burden as we endure economic hardship not seen since the Great Depression.

⁷ <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-15-states-that-permit-voters-to-correct-signature-discrepancies.aspx>

⁸ For a list of the 35 states with permanent statutes, see: <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-1-states-with-no-excuse-absentee-voting.aspx>; For a list of the 44 states making special provisions for a pandemic, see: <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-mail-voting-policies-in-effect-for-the-2020-election.aspx>

⁹ <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>

¹⁰ <https://www.fvap.gov/eo/overview/sending-ballots/preparing-mail>

¹¹ <https://webservices.sos.state.tx.us/vrrequest/index.asp>

6. Records Retention. Texas should require counties to retain election records for longer than 22 months. When Texas Impact made an open records request of the 30 largest counties for “records sufficient to show the total number of ballots by mail accepted and rejected” for the last three primary and general election cycles, a number of counties informed us that they only kept such records for 22 months and had no records responsive to our request for those election dates. Therefore, election records for the last presidential election in 2016 were not available for comparison to the current presidential election in 2020. If a virtue of an electoral system is the transparency of its processes, Texas could be more virtuous if it required its counties to retain election records for a longer period of time. Election records such as ballot by mail rejection rates are important not just for public confidence, but so that political scientists can study the best practices for election administration.

7. Public Information Act. Texas should tighten its requirements so counties are more responsive to Public Information Act requests. Texas Impact made it’s request of the 30 largest counties for “records sufficient to show the total number of ballots by mail accepted and rejected” for the last three primary and general elections on August 5, 2020. Texas Impact had to make follow up phone calls after the ten business day deadline to roughly half the counties to obtain the information. As of Sept. 18, 2020, we still have received no response from Nueces or Brazos Counties despite multiple follow up calls to those offices. Additionally, after follow up calls, Johnson and Jefferson Counties assessed fees for the information. No county has appealed to the Attorney General arguing the information is not public information. The quickest remedy for voters, requestors, and county employees would be for counties to make the information publicly available online.